

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 11-O-17944-LMA (11-O-17952);
)	11-O-17947 (Cons.)
ERIK STEVEN GUNHEIM,)	
)	
Member No. 136486,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT
_____)	

Respondent Erik Steven Gunheim (respondent) was charged with nine counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC),

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 7, 1988, and has been a member since then.

Procedural Requirements Have Been Satisfied

Case Nos. 11-O-17944 (11-O-17952)

On February 3, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was returned by the U.S. Postal Service as unclaimed.

On February 29, 2012, a courtesy copy of the NDC was sent to respondent via e-mail at his official membership records e-mail address. The State Bar received notification that the e-mail message was received.

The State Bar also attempted to contact respondent at his official membership records telephone number and left a message for respondent on his voice mail.

Respondent failed to file a response to the NDC. On March 6, 2012, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the

³ If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on March 27, 2012. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].)

Case No. 11-O-17947

On March 8, 2012, the State Bar filed and properly served on respondent a second NDC by certified mail, return receipt requested, at his membership records address. The second NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The second NDC was returned by the U.S. Postal Service as undeliverable. Courtesy copies of the second NDC were also sent by regular mail to an alternate address, which was not returned, and by e-mail at his official membership records e-mail address.

The State Bar also attempted to contact respondent at his official membership records telephone number and at his cellular telephone number. The State Bar left messages on both of the numbers.

Respondent failed to file a response to the second NDC. On April 5, 2012, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with

all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent.⁴ (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on April 23, 2012. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated.

On October 10, 2012, case Nos. 11-O-17944 (11-O-17952) and 11-O-17947 were consolidated.

On October 26, 2012, the State Bar properly filed and served the petition for disbarment on respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has three disciplinary matters pending; (3) respondent has a record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on November 26, 2012.

⁴ The State Bar incorrectly noted that the second NDC was served on March 6, 2012, in its declaration attached to the motion for entry of default. The correct date is March 8, 2012.

Respondent has been disciplined on one prior occasion.⁵ Respondent was publicly reprimanded for failing to communicate or inform his client of significant developments. Respondent and the State Bar entered into a stipulation re facts, conclusions of law and disposition, effective January 19, 2005.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the two NDCs are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the two NDCs support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

1. Case No. 11-O-17944 (Perrine Matter)

Count One (A) – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to pursue the client's personal injury action and by failing to perform any legal services for his client.

Count One (B) – respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to return the client's phone messages.

Count One (C) – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client file) by failing to release client file upon termination of employment despite repeated requests from the client.

⁵ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

Count One (D) – respondent willfully violated section 6068, subdivision (i) (failure to cooperate/participate in a disciplinary investigation), by failing to respond to the State Bar letters and to participate in the State Bar investigation.

2. Case No. 11-O-17952 (Beebout Matter)

Count Two (A) – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to take any steps to pursue the client’s claim for damages.

Count Two (B) – respondent willfully violated section 6068, subdivision (i), by failing to respond to the State Bar letters and to participate in the State Bar investigation.

3. Case No. 11-O-17947 (White Matter)

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to cooperate with the insurance adjuster and by failing to prosecute the personal injury lawsuit.

Count Two – respondent willfully violated section 6068, subdivision (m), by failing to respond to reasonable client status inquiries and to inform client regarding a settlement offer and case dismissal.

Count Three – respondent willfully violated section 6068, subdivision (i), by failing to respond to the State Bar letters and to participate in the State Bar investigation.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent’s disbarment must be recommended. In particular:

(1) the NDCs were properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the NDCs were served on respondent at his membership records address; and the State Bar attempted to reach respondent by telephone and by email;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDCs deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Erik Steven Gunheim be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Erik Steven Gunheim, State Bar number 136486, be involuntarily enrolled as an

inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: February _____, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court